

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1250 be amended to read as follows:

- 1 Page 1, line 7, after "title" insert "**and rules adopted under this**
- 2 **title**".
- 3 Page 1, line 9, after "title" insert "**and rules adopted under this**
- 4 **title**".
- 5 Page 2, between lines 10 and 11, begin a new paragraph and insert:
- 6 "SECTION 3. IC 7.1-2-5-4 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. ~~Disposition of~~
- 8 ~~Articles Pending Judgment.~~ An alcoholic beverage **or tobacco** seized
- 9 pursuant to this chapter and any other article which may be found on
- 10 the searched premises and taken under the warrant shall not be taken
- 11 from the custody of the person who served the warrant by a writ of
- 12 replevin or other process while the proceedings provided in this chapter
- 13 are pending. A final judgment of conviction in that proceeding shall be
- 14 a bar in all cases to an action for recovery of the thing seized or the
- 15 value of it or damages alleged to have arisen by reason of the seizing
- 16 and detention of it.
- 17 SECTION 4. IC 7.1-2-5-5 IS AMENDED TO READ AS
- 18 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. ~~Property Rights~~
- 19 ~~Limited.~~ All rights of any kind in an alcoholic beverage **or a tobacco**
- 20 **product** of any type, or in a container for an alcoholic beverage, or in
- 21 an article, apparatus, package, fixture or utensil in which an alcoholic
- 22 beverage may be placed, or which is used in connection with it, or a
- 23 vehicle or conveyance in which an alcoholic beverage is being
- 24 transported or which is used for the transportation of an alcoholic
- 25 beverage, shall at all times and under all circumstances by whomsoever

held, owned, or possessed, be deemed qualified by the right of the state, the commission, and the chairman, to administer, execute and enforce the provisions of this title.

SECTION 5. IC 7.1-2-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. ~~Certain Property Rights Prohibited~~. A person shall have no property right of any kind in alcohol, an alcoholic beverage, or malt article, **or tobacco product** had, kept, transported, or possessed contrary to law, or in or to a receptacle or container of any kind in which these liquids and articles may be found, or in an unlawful or prohibited receptacle or container, or in a receptacle or container which does not conform to or which is being used contrary to or which is not kept in conformity to a rule or regulation of the commission, or which is being used to contain an alcoholic beverage upon which a tax is due and unpaid, or an adulterated or misbranded alcoholic beverage, or which is being used in an unlawful practice, or a practice contrary to a rule or regulation of the commission.

SECTION 6. IC 7.1-2-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. ~~Illegal Transportation: Property Rights Limited~~. A person who is interested in illegal transportation, or who has knowledge of it, shall have no right, title, or interest in or to a conveyance of any kind used for the illegal transportation of alcohol, alcoholic beverages, ~~or~~ malt articles, **or tobacco**.

SECTION 7. IC 7.1-2-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. ~~Forfeiture to State~~. An officer who makes an arrest for a violation of the provisions of this title shall seize the evidence of the commission of that violation, including any vehicle, automobile, boat, air or water craft, or other conveyance in which alcohol, alcoholic beverages or malt articles are kept, possessed or transported contrary to law, or contrary to a rule or regulation of the commission. The articles and vehicles mentioned in this section and in ~~IC 1971, 7.1-2-5-5-7.1-2-5-7, IC 7.1-2-5-5 through~~ **IC 7.1-2-5-7**, are hereby declared forfeited to the state and shall be seized."

Page 12, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 20. IC 7.1-3-18.5-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3.5. **An application for a tobacco certificate must contain the express statement of the applicant that the applicant consents for the duration of the certificate term (if the commission issues the certificate to the applicant) to the entrance, inspection, and search by an enforcement officer, without a warrant or other process, of the applicant's retail premises and vehicles to determine whether the applicant is complying with the provisions of this title. The consent required by this section is renewed and continued by the retention of a certificate or the**

1 **certificate's use by an applicant or the applicant's agents."**

2 Page 17, between lines 39 and 40, begin a new paragraph and insert:

3 "SECTION 25. IC 24-3-2-2 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. Unless the context
5 in this chapter requires otherwise, the term:

6 (a) "Cigarette" shall mean and include any roll for smoking made
7 wholly or in part of tobacco, irrespective of size or shape and
8 irrespective of tobacco being flavored, adulterated, or mixed with any
9 other ingredient, where such roll has a wrapper or cover made of paper
10 or any other material; provided the definition in this paragraph shall not
11 be construed to include cigars.

12 (b) "Person" or the term "company", used in this chapter
13 interchangeably, means and includes any individual, assignee, receiver,
14 commissioner, fiduciary, trustee, executor, administrator, institution,
15 bank, consignee, firm, partnership, limited liability company, joint
16 vendor, pool, syndicate, bureau, association, cooperative association,
17 society, club, fraternity, sorority, lodge, corporation, municipal
18 corporation, or other political subdivision of the state engaged in
19 private or proprietary activities or business, estate, trust, or any other
20 group or combination acting as a unit, and the plural as well as the
21 singular number, unless the intention to give a more limited meaning is
22 disclosed by the context.

23 (c) "Distributor" shall mean and include every person who sells,
24 barter, exchanges, or distributes cigarettes in the state of Indiana to
25 retail dealers for the purpose of resale, or who purchases for resale
26 cigarettes from a manufacturer of cigarettes or from a wholesaler,
27 jobber, or distributor outside the state of Indiana who is not a distributor
28 holding a registration certificate issued under the provisions of
29 IC 6-7-1.

30 (d) "Retailer" shall mean every person, other than a distributor, who
31 purchases, sells, offers for sale, or distributes cigarettes to consumers
32 or to any person for any purpose other than resale, irrespective of
33 quantity or amount or the number of sales.

34 (e) "Sell at retail", "sale at retail", and "retail sales" shall mean and
35 include any transfer of title to cigarettes for a valuable consideration
36 made in the ordinary course of trade or usual conduct of the seller's
37 business to the purchaser for consummation or use.

38 (f) "Sell at wholesale", "sale at wholesale", and "wholesale sales"
39 shall mean and include any transfer of title to cigarettes for a valuable
40 consideration made in the ordinary course of trade or usual conduct of
41 a distributor's business.

42 (g) "Basic cost of cigarettes" shall mean the invoice cost of
43 cigarettes to the retailer or distributor, as the case may be, or the
44 replacement cost of cigarettes to the retailer or distributor, as the case
45 may be, within thirty (30) days prior to the date of sale, in the quantity
46 last purchased, whichever is the lower, less all trade discounts and
47 customary discounts for cash, plus the cost at full face value of any

1 stamps which may be required by IC 6-7-1, if not included by the
2 manufacturer in his selling price to the distributor.

3 (h) "Department" shall mean the alcohol and tobacco commission or
4 its duly authorized assistants and employees.

5 (i) "Cost to the retailer" shall mean the basic cost of cigarettes to the
6 retailer, plus the cost of doing business by the retailer as evidenced by
7 the standards and methods of accounting regularly employed by him in
8 his allocation of overhead costs and expenses paid or incurred and must
9 include without limitation labor (including salaries of executives and
10 officers), rent, depreciation, selling costs, maintenance of equipment,
11 delivery costs, all types of licenses, taxes, insurance, and advertising;
12 however, any retailer who, in connection with the retailer's purchase,
13 receives not only the discounts ordinarily allowed upon purchases by
14 a retailer, but also, in whole or in part, discounts ordinarily allowed on
15 purchases by a distributor shall, in determining costs to the retailer
16 pursuant to this section, add the cost to the distributor, as defined in
17 paragraph (j), to the basic cost of cigarettes to said retailer as well as the
18 cost of doing business by the retailer. ~~In the absence of proof of a lesser~~
19 ~~or higher cost of doing business by the retailer making the sale,~~ The
20 cost of doing business by the retailer shall be presumed to be eight
21 percent (8%) of the basic cost of cigarettes to the retailer. ~~In the absence~~
22 ~~of proof of a lesser or higher cost of doing business,~~ The cost of doing
23 business by the retailer, who in connection with the retailer's purchase
24 receives not only the discounts ordinarily allowed upon purchases by
25 a retailer, but also, in whole or in part, the discounts ordinarily allowed
26 upon purchases by a distributor, shall be presumed to be eight percent
27 (8%) of the sum of the basic cost of cigarettes plus the cost of doing
28 business by the distributor.

29 (j) "Cost to the distributor" shall mean the basic cost of cigarettes to
30 the distributor, plus the ~~cost of doing business by the distributor as~~
31 ~~evidenced by the standards and methods of accounting regularly~~
32 ~~employed by him in his allocation of overhead costs and expenses,~~ paid
33 ~~or incurred, and must include without limitation labor costs (including~~
34 ~~salaries of executives and officers); rent, depreciation, selling costs,~~
35 ~~maintenance of equipment, delivery costs, all types of licenses, taxes,~~
36 ~~insurance, and advertising. In the absence of proof of a lesser or higher~~
37 ~~cost of doing business by the distributor making the sale, the cost of~~
38 doing business by the wholesaler, **which** shall be presumed to be four
39 percent (4%) of the basic cost of cigarettes to the distributor, plus
40 cartage to the retail outlet, if performed or paid for by the distributor,
41 which cartage cost, in the absence of proof of a lesser or higher cost,
42 shall be deemed to be one-half of one percent (0.5%) of the basic cost
43 of cigarettes to the distributor.

44 (k) "Registration certificate" refers to the registration certificate
45 issued to cigarette distributors by the department of state revenue under
46 IC 6-7-1-16.

47 SECTION 26. IC 24-3-2-3 IS AMENDED TO READ AS

1 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) It is a Class A
 2 infraction for a retailer or distributor ~~with intent to injure competitors~~
 3 ~~or destroy or substantially lessen competition~~; to offer to sell or sell at
 4 retail or wholesale cigarettes at less than the cost to him. The
 5 **department may do either of the following if a retailer or a**
 6 **distributor violates this subsection:**

7 **(1) Revoke or suspend the:**

8 **(A)** registration certificate held by ~~such a~~ the distributor under
 9 IC 6-7-1; ~~may be revoked; by the department or~~

10 **(B) tobacco certificate held by the retailer;**

11 for the balance of the term ~~thereof~~; **of the certificate.**

12 **(2) Impose a civil penalty under IC 7.1-3-18.5.**

13 (b) Evidence of offering to sell or sale of cigarettes by any retailer
 14 or distributor at less than the cost to him is prima facie evidence of
 15 intent to injure competitors and to destroy or substantially lessen
 16 competition.

17 (c) Notwithstanding IC 34-28-5-5(c), a judgment for a violation of
 18 this section shall be deposited in the enforcement and administration
 19 fund established under IC 7.1-4-10-1.

20 SECTION 27. IC 24-3-2-13 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 13. (a) The department
 22 may adopt rules for the enforcement of this chapter. ~~and the department~~
 23 ~~is empowered to and may undertake a cost survey; as provided for in~~
 24 ~~section 11 of this chapter.~~ The department may, in accordance with
 25 IC 4-21.5-3, suspend or revoke any registration certificate issued by it
 26 to a distributor under IC 6-7-1 for failure of any registrant to comply
 27 with this chapter or any rule adopted under this chapter.

28 (b) All the powers vested in the department by IC 6-7-1 **and**
 29 **IC 7.1-3-18.5-3.5** shall be available to the department in the
 30 enforcement of this chapter."

- 1 Page 17, line 42, after "IC 7.1-3-21-7" delete "." and insert ";
- 2 IC 24-3-2-7; IC 24-3-2-11."
- 3 Renumber all SECTIONS consecutively.
 (Reference is to HB 1250, Printer's Error, as printed January 26,
 2006.)

Representative Whetstone